BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of Courts Below.

The memorandum opinion of the District Court of the United States for the District of Columbia appears in the record (R. 11). Findings of fact and conclusions of law of the District Court appear in the record (R. 12). The opinion of the United States Court of Appeals for the District of Columbia is not yet reported but it appears in the record (R. 28). The dissenting opinion of Mr. Justice Miller appears in the record (R. 37).

Statement of the Case.

The essential facts of the case are fully stated in the accompanying petition for writ of certiorari, which also contains a full statement of questions presented herewith and in the interest of brevity are not repeated here. Any necessary elaboration on the evidence and on the points involved will be made in the course of the argument.

Specification of Errors.

The United States Court of Appeals for the District of Columbia erred:

(1) In concluding that the respondent was not an employer subject to the provisions of the District of Columbia Unemployment Compensation Act.

(2) In concluding that the words "charitable purposes" as used in paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act were synonymous with the word "charity" as that term is used in the "charitable trust" cases.

(3) In concluding that the respondent's broad, general promotional, propaganda, legislative and political activities did

not prevent the respondent from being a corporation organized and operated exclusively for charitable, religious or educational purposes within the meaning of paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act.

(4) In concluding that the respondent was entitled to exemption under paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act even though the respondent does not relieve the Government of any of its burden.

ARGUMENT.

Specifically, the question involved in this case is whether or not the respondent is a corporation entitled to exemption under paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act, Act of June 23, 1936, Public No. 762—74th Congress—49 Stat. 1888, Title 46, Section 301, D. C. Code, which provision reads as follows:

> "(7) service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;"

I.

The decision of the United States Court of Appeals for the District of Columbia is in conflict with the decisions of the First and Second Circuit Courts of Appeals.

The case of *Slee* v. *Commissioner of Internal Revenue*, 42 Fed. (2d) 184, a decision of the Second Circuit Court of Appeals, is in conflict with the decision in the instant case. In the Slee case the American Birth Control League contended that

gifts made to its League could be deducted under the Federal Income Tax exemption for charitable and educational organizations, the Internal Revenue Acts of 1924 and 1926, 42 Stat. 227, U. S. C. A., (1940 ed.) Title 26, Sec. 955 (a) (10) which exemption provision is identical with the exemption provision in the instant case. The Second Circuit concluded that although the League was engaged in charitable activities, its purpose as stated in its Constitution to enlist the support of legislatures to effect repeal of laws prohibiting birth control, "unclassed" the League as a corporation organized and operated *exclusively* for charitable purposes. The Court made the following pertinent observation:

> "* * * so far * * * as its political activities were general * * * its purposes cannot be said to be 'exclusively' charitable, educational or scientific, * * *."

The only element which "unclassed" the League, which was engaged in admittedly charitable work, from being organized and operated exclusively for charitable purposes, was that one of the purposes stated in its Constitution was to repeal legislation prohibiting birth control. In the instant case the Constitution likewise sets up general legislative purposes for: (1) the enactment and enforcement of laws prohibiting the alcoholic liquor traffic (2) the enactment and enforcement of laws prohibiting the white slave traffic, (3) the enactment and enforcement of laws prohibiting harmful drugs, and (4) the enactment and enforcement of laws prohibiting kindred evils in the United States and throughout the world. (R. 13.) If the Constitution in the Slee case and the Constitution in the instant case are compared, it is apparent that the legislative objects for which the respondent is organized are much broader and more general than the legislative objects set out in the Constitution of the American Birth Control League. The only legislative element in the Slee case was the power given the League in its Constitution. No other legislative objects or activities

whatsoever were shown. In the instant case, however, in addition to the stated legislative purposes in the Constitution, there are six other elements which show the respondent's broad legislative objects and activities:

(1) The respondent has a Legislative Superintendent who conducts campaigns (a) for the enactment and enforcement of laws, (b) for the adoption or repeal of constitutional amendments, state and federal, or (c) for the election of public officials whenever, in his judgment, there is a moral issue at stake of such consequence to justify participation of the respondent. (R. 13.)

(2) The respondent has a Legislative Director who has charge of securing the enactment of good federal or state laws affecting morals and who is charged with the duty of defeating or repealing bad legislation. (R. 13.)

(3) The respondent distributes a pamphlet entitled "The Objects, Methods and Achievements of the International Reform Federation," which states that the respondent has secured the enactment of eighteen acts of Congress and lists the eighteen "Legislative Victories." This pamphlet also lists thirty subjects on which some type of legislation has been recommended by the respondent to various legislatures. (R. 13.)

(4) The respondent drafts laws to be introduced in the United States Congress and the various state legislatures. (R. 10, 14.)

(5) The respondent sends its publications to members of the United States Congress and state legislatures when moral issues are pending. (R. 23.)

(6) The respondent attempts to accomplish its purposes by carrying on propaganda and by active work before committees of Congress and state legislatures. (R. 10, 14.)

In view of this wealth of testimony, the *statement of opinion* of the respondent's General Superintendent that the activities of the appellant in efforts to secure new legislation and modification of existing legislation in accordance with its charter

was not one of its chief purposes, but incidental and secondary thereto, is not consistent with the *specific facts* in the record and is of absolutely no probative value.

Since the exemption provision in the instant case requires a corporation to be organized and operated *exclusively* for charitable purposes, these broad general legislative objects and activities cannot be overlooked and cannot be brushed aside by merely calling them ancillary or mediate. If the respondent had no broad general legislative objects or activities or if its only legislative activity was one of the collateral matters outlined by Justice Hand in the Slee case, the petitioner would agree that the respondent would not be "unclassed" by such legislative activity. In other words, if the respondent's only legislative activity was a remote or unusual appearance before the legislature to obtain exemption for itself from taxation, to obtain a change in its charter or to obtain any other collateral legislation as an incident to its success, the respondent would then be engaged in the type of legislative activity which Justice Hand terms ancillary and mediate. In the instant case, however, the respondent as an active daily program, drafts bills, makes voluntary appearances at legislative hearings, and engages in general promotional activities in order to secure legislative reforms in a very broad and almost unlimited field *"in accordance with its charter."* (R. 24.) The conclusion is unescapable that the legislative objects set out in the respondent's charter are themselves principle objects and a part of the foundation and backbone of the respondent's very existence. The fact that the legislative objects and activities of the respondent are allied to the other objects and activities does not distinguish it from the Slee case. In the Slee case the "unclassing" purpose to repeal laws prohibiting birth control was closely allied to the other objects of the League.

The case of *Vanderbilt et al.* v. *Commissioner of Internal Revenue,* 93 Fed. (2d) 360, a decision of the First Circuit Court of Appeals is likewise in conflict with the decision of the

United States Court of Appeals for the District of Columbia in the instant case. In the Vanderbilt case the National Women's Party claimed exemption from taxation as a charitable and educational organization. In principle, the Party's objects were identical with the objects of the respondent in the instant case. The statute under which the Party claimed exemption, 44 Stat. 72, U. S. C. A., (1940 ed.), Title 26, Sec. 412 (d), was identical with the exemption statute in the instant case. The object of the Party was to secure reforms which would benefit women, and, as part of this program, it engaged in the drafting of legislation and in efforts to secure enactment of legislation in furtherance of its aims. The First Circuit Court of Appeals, in holding that The National Women's Party was not entitled to exemption, stated:

> "* * * The procuring of the enactment and repeal of laws through the drafting of bills, their advocacy, the furnishing of facts and information in their support, and the payment of the costs of carrying on such activities are not educational but political. * * *"

The opinion in the instant case has sought to distinguish one of its own decisions, the case of *Hazen* v. *National Rifle Association of America, Inc.*, 69 App. D. C. 339, 101 Fed. (2d) 432, on the grounds that the promotional, propaganda and legislative activities which were shown to exist in the Hazen case did not exist in the instant case. In view of the respondent's admissions and the Court's recitation of facts, the petitioner does not believe this to be a valid distinction. The Constitution of the respondent begins by using the words "promotion" of "reform". What could be more promotional than a reform? Furthermore, the vast majority of the respondent's activities, in the final analysis, consists of promotional work.

The respondent admits that it engages in *propaganda* activities (R. 10). The activities which the respondent seeks to propagate are all of a controversial nature. The fact that certain people believe that the absolute prohibition of the use of

liquor will be helpful to mankind, does not make that issue any the less controversial. So it is with all of the reforms which the respondent seeks to promote. This Court will undoubtedly take judicial notice of the fact that legislation relating to gambling, Sabbath observance, uniform marriage and divorce laws or the prevention of brutal sports (prize fights) are controversial issues. As the dissenting opinion well states these issues would constitute a formidable party platform (R. 43.) In fact many of the issues have been a plank in party platforms in national and state elections. So much are these matters controversial and political that the respondent deemed it necessary in its Constitution to provide that its Legislative Superintendent could conduct campaigns for the enactment and enforcement of laws for the adoption or repeal of constitutional amendments, state and federal, or for the election of public officials whenever, in his judgment there was a moral issue at stake of such consequence to justify the participation of the respondent. This is the type of activity which was condemned by the United States Court of Appeals for the District of Columbia itself in the case of *Hazen* v. *National Rifle Association of America, Inc., supra.* Likewise, the Second Circuit Court of Appeals condemned this type of activity in the case of *Leubuscher* v. *Commissioner of Internal Revenue,* 54 Fed. (2d) 998. In holding that the advocacy of controversial propaganda in the form of the Henry George Doctrine was without the contemplation of the Internal Revenue Act of 1924, 43 Stat. 253, U. S. C. A., (1928 ed.), Title 26, Sec. 1095 (a) (3), the Second Circuit Court of Appeals said:

> "* * * This does not express an educational purpose, although it may be educational in some degree to those who listen to or read the theories urged. It has for its purposes the dissemination of controversial *propaganda,* which means a plan for the publication of a doctrine or system of principles." (Italics added.)

The legislative activities which appeared in the record of the case of *Hazen* v. *National Rifle Association of America, Inc., supra,* consisted solely of a statement in the Certificate of Incorporation that the organization was to encourage legislation for the establishment and maintenance of suitable ranges. No showing was made as in the instant case of additional legislative objects and activities.

The opinion of the United States District Court for the District of Columbia fails to give weight to the controlling factors which distinguish the *Girard Trust Company* v. *Comissioner of Internal Revenue,* 122 Fed. (2d) 108, from the instant case. In the Girard case the Court held that the Board of Temperance, Prohibition and Public Morals of the Methodist Church was in fact an integral part of the Methodist Church itself, which is admittedly a religious organization. When the work of the Methodist Church as a whole is considered with the legislative activities of the Board, then the legislative activities of the Board are comparatively small and do not represent a substantal part of the activity of the Methodist Church. Therefore, the Court held that the legislative activities were mediate and ancillary to the main objects of the Methodist Church. It was only upon this line of reasoning that the Court held that the Board was entitled to exemption. In the instant case the respondent is not an integral part of any religious organization. Consequently, the respondent's status must be determined solely upon its own constitution, by-laws and activities.

The decision of the United States Court of Appeals for the District of Columbia, in the instant case states that the fact that the qualifying language of the exemption provision in the Internal Revenue Act of 1934, 48 Stat. 755, U. S. C. A., (1940 ed.), Title 26, Sec. 412 (d), with regard to propaganda and legislative activities does not exist in the exemption statute in the instant case indicates that Congress intended that organzations engaged in these activities should be exempt. It is

interesting on this point to observe that the Internal Revenue Acts of 1924 and 1926, which were the statutes involved in the case of *Slee* v. *Commissioner of Internal Revenue, supra,* the Internal Revenue Act of 1924 which was the statute involved in the case of *Leubuscher* v. *Commissioner of Internal Revenue, supra,* and the Internal Revenue Act of 1926 which was the statute involved in the case of *Vanderbilt et al.* v. *Commissioner of Internal Revenue, supra,* were all *identical* with the exemption statute in the present case. In each of these cases the Courts held that the legislative objects and activities of the organizations involved prevented them from being organized and operated *exclusively* for one or more of the exempt purposes The statute which the United States Court of Appeals for the District of Columbia construed in the case of *Hazen* v. *National Rifle Association, supra,* was similar to the statute in the instant case. There the statute required that the property be used *solely* for educational purposes. No mention was made in the statutes with regard to propaganda and legislative activities. Nevertheless, the Court held that the propaganda and legislative activities were sufficient to disqualify the organization from exemption. It, therefore, appears clearly that the propaganda and legislative causes which were added to the Internal Revenue Act of 1934 were merely a legislative declaration of existing law.

II.

The decision of the United States Court of Appeals for the District of Columbia involves a question of great importance.

All of the forty-eight states of the United States have exemption provisions in their unemployment compensation laws which are similar to the exemption provision which was construed by the United States Court of Appeals for the District of Columbia in the instant case. Twenty-five of these states have exemption provisions in their unemployment compensa-

tion laws which are identical with the exemption provision in the District of Columbia Unemployment Compensation Act. The Federal Social Security Act likewise has an exemption provision which is similar to the exemption provision in the instant case. This decision of the United States Court of Appeals for the District of Columbia being one of the first of its kind in the United States and the first Federal decision involving construction of exemptions in unemployment compensation legislation, will be used as authority in connection with the administration of the state unemployment compensation laws and the Federal Social Security Act. Thus, the opinion is of great importance and will have a far-reaching effect on the administration of the social security program throughout the United States.

The Court's opinion gives a broad and all-inclusive meaning to the words "charitable purposes" and holds that a complete and controlling analogy exists between the definition of the terms "charitable purposes" which have been used for charitable trust case purposes and those charitable purposes which will exempt an organization from taxation. Charitable trusts are favorites of the Courts. Construction of all instruments which involve charitable trusts are liberal. Every presumption in favor of the validity of a trust is indulged in by the Courts. *Ould* v. *Washington Home for Foundlings*, 95 U. S. 310, 25 L. Ed. 450. Even the rule against perpetuities is relaxed in behalf of charitable trusts (1891) 3 Ch. 252; *Woodruff* v. *Marsh*, 63 Conn. 125, 26 A. 846. If the question before the Court was whether or not a trust set up for the respondent's purposes created a valid trust, the question would be an entirely different one. In such a case the petitioner would concede that some charitable purpose might be *found*—irrespective of the other purposes for which the respondent was organized and operated. All of the cases cited by the Court in its opinion and all of the cases cited by the respondent in its briefs and memoranda in the Courts below, to support the broad and all-inclusive meaning of the word "charity," are

charitable trust cases. Diligent search by counsel for the petitioner has failed to disclose any case involving tax exemption where the words "charitable purposes" have been given the broad meaning of the charitable trust cases.

On the other hand, the clear and well defined distinction which exists between cases where the question of whether a charitable trust is valid and those cases of whether an organization is to be regarded as organized and operated exclusively for charitable purposes within the meaning of tax exemption statutes have been recognized and applied in both the Federal and State Court decisions. One of the trust cases cited in the Court's opinion in the instant case, *George et al.* v. *Braddock*, 45 N. J. 757, 18 A. 881, holds valid a charitable trust to distribute the Henry George Doctrine advocating the single tax principle. In a decision by the Second Circuit Court of Appeals, *Leubuscher* v. *Commissioner of Internal Revenue, supra,* it was held that a club set up for *identical* purposes was not entitled to exemption under Section 303 (3) of the Internal Revenue Act of 1924, 43 Stat. 253, U. S. C. A. (1928 ed.), Title 26, Sec. 1095 (a) (3), which provision is identical with the exemption provision in the instant case. In the Leubuscher case, a legacy was given to the Manhattan Single Tax Club whose purpose was to advocate the Henry George Doctrine and the promotion of social intercourse "among single tax people." In denying exemption the Second Circuit Court of Appeals stated:

> "This we do not regard as *exclusively* educational within the meaning of the statute but on the contrary it tends * * * to accomplish the purpose of the person proposing it." (Italics added.)

A number of State Courts have held to the same effect as the decision of the Second Circuit Court of Appeals. The case of *Industrial Commission* v. *Wisconsin Cemetery Association* 232 Wisc. 527, 267 N. W. 750, is a case which involves specifically the construction of the exemption provision in the Wisconsin Unemployment Compensation Law which exemp-

tion statute is similar to the statute in the instant case. It was contended that since the cemetery associaion was charitable within the meaning of the trust cases, it was entitled to exemption under that statute. The Court in denying exemption said:

> "In this connection we note that there may be a distinction between cases involving gifts to cemetery associations in which a broader definition of * * * 'charitable purposes' has frequently been given, and *those involving tax or other exemptions in which these terms are held to a narrower meaning*, Hopkins v. Grimshaw, 165 U. S. 342, 41 L. ed. 739." (Italics added.)

In the case of *Scottish Rite Building Company* v. *Lancaster County*, 106 Neb. 95, 182 N. W. 574, the Scottish Rite order contended that its property was exempt because it was used exclusively for charitable purposes. The Court in denying exemption said:

> "While it is true that the thought expressed in the word 'charity' is, in the language of the poet, the philosopher or the moralist, capable of many varieties and shades of meaning, * * *. What they (the legislature) meant, common sense teaches us, was concrete, practical, objective charity, manifested in things actually done for the relief of the unfortunate and the alleviation of suffering, or in some work of practical philanthropy, as contrasted with the sentimental or ethical viewpoint."

In *Scott on Trusts*, Volume III (1939), paragraph 374.4, page 2007, in referring to the case of *Slee* v. *Commissioner of Internal Revenue, supra*, it is stated:

> "* * * Learned Hand, J., said that the league was not operated *exclusively* for charitable purposes within the meaning of the revenue statute because *one* of the purposes was to agitate for a change in law. He expressed no doubt, however, on the question whether the purposes

of promoting health and education are charitable, * * *; and undoubtedly a *trust* to promote these purposes, even though it might involve a change in law, would be a *valid charitable trust.*" (Italics added.)

Again, the distinction contended for by the petitioner was recognized in *Scott on Trusts,* Volume III (1939), paragraph 375.2, page 2025, where it is stated:

"* * * a decision that a trust or organization is not exempt from * * * taxes is not necessarily a decision that it is not charitable. A bequest in trust for a particular purpose *may be valid as creating a charitable trust, although it may be held that it is not exempt from taxation.* * * *" (Italics added.)

The decision of the United States Court of Appeals for the District of Columbia states that Congress had in mind a broad definition of the words used in the exemption statute when it used the terms "charitable purposes". No reasons are given in the opinion for this broad statement. On the contrary it seems more reasonable that if Congress had intended to use the words "charitable purposes" in the broad and all-inclusive meaning, as used in the charitable trust cases, there would be no need to include the additional enumerations in the section, because: a *religious* purpose is charitable within the meaning of the trust cases, a *scientific* purpose is charitable within the meaning of the trust cases, a *literary* purpose is charitable within the meaning of the trust cases, an *educational* purpose is charitable within the meaning of the trust cases, and the purpose *to prevent cruelty* to *children* or *animals* is charitable within the meaning of the trust cases. In other words, if Congress intended that the word "charitable," as used in this taxing statute, was to be given the same broad meaning as in the trust cases, it would have used the word "charitable" and stopped. Clearly then, the enumeration of additional charities, as that word is used in the charitable trust case sense,

shows conclusively that Congress intended that the words "charitable purposes," as used in paragraph 7 of Section 1 (b) of the District of Columbia Unemployment Compensation Act, should be restricted to its narrow meaning of eleemosynary. This obvious fact was recognized by the District Court in its memorandum opinion (R. 11) and by the dissenting opinion of Mr. Justice Miller (R. 38).

In all of the cases involving the construction of unemployment compensation legislation throughout the United States, with which the petitioner is familiar, the doctrine is that exemption should be given only when the legislative intention is clear. A very recent case, *Consumers' Research, Inc.* v. *Evans*, ___ N. J. ___, 24 A. (2d) 390, (February 13, 1942), involves construction of an exemption provision in the New Jersey Unemployment Compensation Act which exemption provision is identical with the exemption provision in the instant case. In denying exemption to this organization the New Jersey Court said:

> "The expressed legislative purpose of the unemployment compensation law is beneficent. It declares the public policy to be the economic security of the unemployed worker and sets up methods to accomplish that desired end. There should be a liberality of construction for the purpose of carrying out the legislative intent. *Exemption should only be allowed where the right to it is clear and unequivocal.*" (Italics added.)

The case of *California Employment Commission* v. *Black-Foxe Military Institute*, 42 Cal. App. (2d) 868, 110 P. (2d) 729 (1941), also illustrates this doctrine. There the Court with reference to construction of the California Unemployment Compensation Law said:

> "* * * It sets up a scheme for ameliorating the hardships of unemployment, and undertakes, * * * to pay

> unemployment benefits to those who, without fault of their own, are out of work, * * * In view of the purpose of these provisions they should not be whittled down by a narrow construction, *nor should exceptions not clearly justified by their language be engrafted upon them by judicial interpretation.*" (Italic added.)

Other cases involving construction of exemption from the provisions of unemployment compensation laws where the same rule has been enunciated are: *Young* v. *Bureau of Unemployment Compensation*, 63 Ga. App. 130, 10 S. E. (2d) 412, 415 (1940); *Maine Unemployment Compensation Commission* v. *Andro Scoggin, Jr., Inc., et al.* 137 Me. 154, 16 A. (2d) 252, 255 (1940); *and Mohawk Mills Association, Inc.* v. *Miller*, 22 N. Y. S. (2d) 993 (1940).

Obviously, the United States Court of Appeals for the District of Columbia has lost sight of the purpose of Congress in enacting the District of Columbia Unemployment Compensation Act. The clear intention of Congress was to alleviate the hardships occasioned by involuntary unemployment and to extend this beneficial social legislation to the largest possible group. If an organization is exempt from making contributions to the District Unemployment Fund, the employees of such organization are excluded from the social benefits for which this fund was created, Section 10 (a) (2), District of Columbia Unemployment Compensation Act, 49 Stat. 950, as amended, 54 Stat. 733, Title 46, Section 309, D. C. Code. Especially in view of this intention, the words "charitable purposes" should be construed as synonymous with eleemosynary and the employees of organizations such as the respondent should not be excluded from the benefits of this social legislation. It was not the intention of Congress that the large group of employees of all organizations for which some charitale purpose might be found—irrespective of the organizations' other objects and activities—should be denied the benefits of the District of Columbia Unemployment Compensation Act. Only agencies

which are organized and operated *exclusively* for charitable purposes are entitled to exemption under the statute involved in the instant case. The question of obtaining revenue is not important. It is common knowledge that the District Unemployment Fund has a reserve of over thirty million dollars at the present time and that all of the state unemployment compensation commissions have bulging reserves in their trust funds in the Treasury of the United States. What is important is that the decision of the United States Court of Appeals for the District of Columbia denies wrongfully the benefits of this social legislation to the employees of many organizations which Congress clearly intended should be included. Therefore, this decision is of general importance since it drastically narrows the coverage of social legislation such as the District of Columbia Unemployment Compensation Act and will have a serious and detrimental effect on the whole social security program throughout the United States.

III.

The decision of the United States Court of Appeals for the District of Columbia passes on a question of substance relating to the construction of a statute of Congress which has not been but should be decided by this Court.

This is the first decision by a Federal Court involving construction of an exemption provision in unemployment compensation legislation of this nature. The decision announces broad general principles of great importance and wide significance in a new field of jurisprudence. These principles have never been the subject of review by this Court. Since all of the state unemployment compensation laws and the Federal Social Security Act have exemption provisions which are similar to or identical with the one involved in this case, these principles should be reviewed by this Court.

CONCLUSION.

For the foregoing reasons it is submitted that this Court should grant a writ of certiorari as prayed in the accompanying petition.

Respectfully,

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